IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 6233 of 2007

BHERU LAL
V/S
A.D.J.(F.T.)NO.2 BHILWARA & ORS.

Mr. KC SAMADARIYA, for the appellant / petitioner

Date of Order : 27.9.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner, perused the impugned order.

By the impugned order, the learned trial Court had dismissed the petitioner's application for amendment of the written-statement.

It is contended by learned counsel that the application has been rejected on the ground that the trial has commenced, while as a matter of fact, the trial has not yet commenced, as issues had been framed, and thereafter the plaintiff was permitted to file rejoinder, and then by the other part of the impugned order itself, additional issue has been framed, and no evidence of the plaintiff has been led, as such, it cannot be said that the trial has commenced. Then arguing on merits, it was contended that the amendment in the written-statement was necessitated because of the plaintiff filing rejoinder, inasmuch as, in the rejoinder, the plaintiff has taken various new pleas,

and the petitioner did not get any opportunity to refute those averments, and therefore, in order to refute those averments, the amendment of the written-statement is necessary. Even in para 2 of the application, it is pleaded that the plaintiff has pleaded new facts in the rejoinder, and has also pleaded various provisions of law, and since the rejoinder has been taken on record, and there being no provision for filing reply to the rejoinder, the petitioner is left with no alternative, except to amend the written-statement.

In my view, a look at the impugned order shows that the learned trial Court of course has observed that the trial has commenced, but then it has also been observed that the pleas sought to be raised by the amendment are legal pleas, so far the requirement of cancellation of power of attorney, and admissibility of unregistered sale deed for collateral purposes, and that the petitioner is always free to take the stand even without amendment of the written-statement, and at any stage, and if such objection is raised, the Court is bound to consider that. Then regarding the plea about absence of title in the plaintiff, it has been observed that this plea is already there in the written-statement originally filed, may be indirectly, and therefore, this amendment is also not necessary. Then it has also been observed that the application for amendment has not been filed with promptitude and dispatch.

In my view, though the grounds given about the

commencement of the trial, and absence of promptitude may not be correct, but then the other grounds given also are by themselves sufficient to decline interference in the impugned order. Learned counsel read to me the rejoinder, and the amendment application also, and in my view, the learned trial Court has rightly found that the legal objections can always be raised about requirement of cancellation of power of attorney as a condition precedent for prayer for cancellation of sale deed, so also about admissibility of the unregistered sale deed for collateral purposes, and the question of absence of title in the plaintiff No.1 is also already included in the originally filed written-statement. Thus, the amendment is not necessary. In that view of the matter, I do not find any ground to interfere with the impugned order.

The writ petition is, therefore, dismissed summarily.

(N P GUPTA),J.

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